MONTANA LEGISLATIVE HISTORY

Did not pass
Chapter _____ 1995

Bill H 582 S _____ Original bill & history ___C

H. Committee on Taxation		S. Committee on _____	
Hearing Date(s) 3-9	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Missed transmittal - Died in House committee

3/03	REFERRED TO APPROPRIATIONS		
3/04	FISCAL NOTE REQUESTED		
3/09	FISCAL NOTE RECEIVED		
3/13	FISCAL NOTE PRINTED		
3/16	REREFERRED TO BUSINESS & LABOR		
3/20	HEARING		
3/21	TABLED IN COMMITTEE		
3/23	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	40	55
3/27	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	39	57
3/28	MOTION TO TAKE FROM COMMITTEE LAID ON TABLE	61	33
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY DIED IN COMMITTEE		

HB 581 INTRODUCED BY FORBES, ET AL.

ALLOCATE A PORTION OF ACCOMMODATION TAX COLLECTIONS TO BE USED FOR GRANTS FOR THE CONSTRUCTION OF TOURISM-RELATED FACILITIES

3/03	INTRODUCED
3/03	FIRST READING
3/03	REFERRED TO APPROPRIATIONS
3/04	FISCAL NOTE REQUESTED
3/09	FISCAL NOTE RECEIVED
3/10	FISCAL NOTE PRINTED
3/16	REREFERRED TO BUSINESS & LABOR
3/20	HEARING
3/21	TABLED IN COMMITTEE
3/24	MISSED TRANSMITTAL DEADLINE FOR 67TH DAY DIED IN COMMITTEE

HB 582 INTRODUCED BY BOHARSKI, ET AL.

PROVIDE AN INDIVIDUAL INCOME TAX CREDIT FOR QUALIFYING ELEMENTARY AND SECONDARY EDUCATION EXPENSES PAID BY AN INDIVIDUAL FOR A DEPENDENT MINOR

3/04	INTRODUCED
3/04	FIRST READING
3/04	REFERRED TO TAXATION
3/06	FISCAL NOTE REQUESTED
3/09	HEARING
3/18	FISCAL NOTE RECEIVED
3/20	FISCAL NOTE PRINTED
3/22	TABLED IN COMMITTEE
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY DIED IN COMMITTEE

HB 583 INTRODUCED BY EWER, ET AL.

REVISE FUNDING OF STATE EQUALIZATION AID TO PUBLIC SCHOOLS

3/06	INTRODUCED
3/06	FIRST READING
3/06	REFERRED TO TAXATION
3/09	FISCAL NOTE RECEIVED
3/09	FISCAL NOTE PRINTED
3/13	HEARING
3/21	TABLED IN COMMITTEE
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY DIED IN COMMITTEE

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL INCOME TAX CREDIT FOR QUALIFYING ELEMENTARY AND SECONDARY EDUCATION EXPENSES PAID BY AN INDIVIDUAL FOR A DEPENDENT MINOR; REQUIRING A DECLARATION OF INTENT TO CLAIM A TAX CREDIT; AMENDING SECTIONS 20-9-161, 20-9-162, 20-9-163, AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, Article X, section 1(1), of the Montana Constitution guarantees equality of educational opportunity to each person of the state; and

WHEREAS, the Legislature finds that allowing lower-income parents the same ability that wealthy parents now have in selecting the school of their choice enhances equality of educational opportunity; and

WHEREAS, the Legislature strongly supports the rights of parents to choose the way in which their children are educated, consistent with their academic expectations and personal values; and

WHEREAS, the Legislature believes that competition in the educational marketplace has a strengthening effect on both public and private education and serves the long-term best interests of all students; and

WHEREAS, the Legislature supports an education policy that fosters the free movement of educational consumers to the schools of their choice; and

WHEREAS, the Legislature finds that it is fiscally and educationally prudent to have the private sector absorb a portion of the ever-increasing number of students that are overcrowding our public schools and costing taxpayers tens of millions of dollars of capital construction costs; and

WHEREAS, the Legislature finds that parental choice in education can reduce the Montana property and income tax burdens and increase the amount of money available to educate each child in the public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Elementary and secondary education expense tax credit.** (1) There is

a credit against the taxes otherwise due under this chapter for qualified elementary and secondary education expenses paid by an individual for a dependent who is a minor during the tax year. In order to claim the credit, the individual must have a completed intent form to claim an education tax credit on file with the state pursuant to [section 2].

(2) (a) Education expenses that qualify for the credit under this section are amounts paid as tuition and fees by an individual for a dependent who is in compliance with Title 20, chapter 5, part 1.

(b) Qualifying education expenses do not include amounts paid to a governmental entity as property taxes, assessments, or fees.

(3) The amount of the credit for qualifying education expenses is as follows:

(a) up to $375, as applied against the first $375 of qualifying education expenses, for the tax year beginning January 1, 1995, but only for the amount by which those expenses have increased from the previous tax year;

(b) up to $750 for the tax year beginning January 1, 1996, as applied against the first $375 of qualifying education expenses for attendance from January 1, 1996, to June 30, 1996, and against the first $375 of qualifying education expenses for attendance from July 1, 1996, to December 31, 1996; and

(c) up to $1,000 for tax years beginning on or after January 1, 1997.

(4) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. Any amount of the credit allowed under this section that is in excess of an individual's tax liability must be refunded to the individual.

(5) In the case of a married individual filing a separate return, the amount of the credit under subsection (3) is limited to one-half of the applicable amount.

NEW SECTION. **Section 2. Intent to claim education tax credit -- form.** (1) The superintendent of public instruction shall provide a form on which to declare the intent to claim an education tax credit. The form must outline the tax credit provided by [section 1] and must contain an affidavit that the individual completing the form intends to enroll a dependent minor in a school other than a public school in the district of residence during the following school year. The form must be distributed to each student attending public school. Forms must also be provided to and be available from each county superintendent of schools.

(2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually complete the form provided for in subsection (1) and return the form to an official of the individual's district

of residence by May 10. Each district shall forward the forms to the county superintendent, who shall then forward the forms to the superintendent of public instruction. The number of eligible dependent minors indicated on the forms who were enrolled during that year must be excluded from ANB calculations for the ensuing school year.

(3) The superintendent of public instruction shall forward a copy of each form to the department of revenue for use in determining eligibility for the tax credit provided for in [section 1].

Section 3. Section 20-9-161, MCA, is amended to read:

"20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is:

(a) beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year; or

(b) because of enrollment of students for whom a form to declare the intent to claim an education tax credit was filed as provided in [section 2];

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year; or

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents; or

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district as a result of the protested taxes; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district."

Section 4. Section 20-9-162, MCA, is amended to read:

"**20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that a budget amendment required by an enrollment increase as provided in 20-9-161(1)(a) may not be adopted until after October 1.

(b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a resolution.

(c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated source of financing, the estimated amount of money required to finance the budget amendment, and the time and place the trustees will meet for the purpose of considering and adopting the budget amendment for the current school fiscal year.

(2) The trustees shall send a copy of the proclamation to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent of public instruction for approval in the manner provided in 20-9-163."

Section 5. Section 20-9-163, MCA, is amended to read:

"**20-9-163. Resolution for budget amendment -- petition to superintendent of public instruction.** (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the budget amendment. The petition must be signed by a majority of the trustees.

(2) The petition must state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the budget amendment, the anticipated source of financing for the budget amendment, and the current year enrollment.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment because of increased enrollment. If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)(a), the superintendent of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment."

Section 6. Section 20-9-311, MCA, is amended to read:

"**20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by:

(i) adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the nearest school day if those dates do not fall on a school day~~;~~ ~~and~~

(ii) divide the sum by two; and

(iii) subtract the number of students who were enrolled during the prior school fiscal year as indicated on the forms provided for in [section 2]; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel,

or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(10) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent."

NEW SECTION. **Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the provisions of Title 20, chapter 3, part 1, apply to [section 2].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid

applications.

NEW SECTION. **Section 9. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0582, as amended by House Taxation Committee 3/15/95

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing an individual income tax credit for qualifying elementary and secondary education expenses paid by an individual for a dependent minor; requiring a declaration of intent to claim a tax credit; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. This bill applies retroactively to tax years beginning after December 31, 1994; the first fiscal impact will be felt in FY96.
2. The credit is available for students receiving educational benefits in compliance with Title 20, Chapter 5, Part 1 attending private or attending public schools for which parents pay tuition.
3. The credit allowed is a "refundable credit"; that is, the credit amount in excess of the taxpayers's tax liability will be refunded to the taxpayer.
4. The individual claiming the tax credit must file a form declaring the individual's intention to claim an educational tax credit with the school district of residence by May 10 for the ensuing school year. The first opportunity to file this form would be in May 1995.
5. Home school students will not qualify for the credit due to the requirement that the credit is only available for "tuition" payments which must be made to a third party.
6. Public schools who are currently waiving tuition charges do not initiate charges in response to this potential credit to parents.
7. The requirement that credits only be allowed for the first $375 of tuition or fees and that it only applies to the extent this is an increase from 1994 will limit the credit to new private school students and new public school students for whom the parents must pay tuition. This limit applies to tax years 1995 and 1996.
8. The estimate of the fiscal 1996 and 1997 impact assumes that tax credits are taken for expenses incurred for newly enrolled students. Newly enrolled students includes those who transfer from public schools, those initially entering a public school for which the parents pay tuition, and those entering private schools as their first school.
9. New private school enrollments and public school enrollments for whom parents may tuition are annually 10% of the respective total enrollments excluding those who transfer from public schools.
10. Without the tax credit incentive, enrollment in Montana public schools will grow at an annual rate of approximately 1% per year; private school enrollment will grow at the same rate.
11. Prior to enactment of HB582 private school enrollment are anticipated to be 8,690 students in 1995-1996 and 8,773 students in 1996-1997. Public school enrollments for whom parents pay tuition are anticipated to be 795 in 1995-1996 and 803 in 1996-1997.
12. It is assumed that 1% of public school enrollments would transfer in the first year and 2.0% by the second year. The total number of students transferred out of the public school system will be 1662 in 1995-1996 and 3356 by 1996-1997.

Dave Lewis 3-18-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Wm E Boharski

WILLIAM BOHARSKI, PRIMARY SPONSOR DATE
Fiscal Note for HB0582, as amended by House Taxation Committee 3/15/95

HB 582

13. In tax year 1995 (FY96), an average credit of $375 will be claimed for 1662 students enrolling in private schools rather than public schools, 869 new students enrolling for the first time in private schools, and 80 new public school students for whom parents pay tuition.
14. In tax year 1996 (FY97), an average credit of $750 will be claimed for the 2611 students cited in item #12. In addition 1694 students who enroll in private schools rather than public schools, 877 new private school students, and 80 new public school students for whom parents pay tuition beginning in school year 1996-97 will be eligible for a $375 credit.
15. Due to the decline in the amount of credit for each additional student in families with more than one student the average credit per student will be 81.7% of the maximum credit allowed.
16. The full revenue impact of the tax year liability impact occurs in the following fiscal year.
17. The per-student entitlement is $3,343 for students in grades K-6 and $4,680 for students in grades 7-12. Non-public school students are pro-rated at 70% K-6 and 30% grades 7-12.
18. The average per student state general fund savings resulting from students enrolling in private schools who would have otherwise been anticipated to enroll in public schools will be $2039.
19. These estimates do not include public school students whose parents pay fees for commercial/industrial arts, music, science, or agricultural courses, or fees paid to participate in athletics or driver's education.
20. The savings to the state for reduced direct state aid and GTB aid will be $3,388,736 for FY 1996 and $6,842,435 for FY 1997.
21. There will be an annual cost of $9,000 associated with the printing and distribution of 180,000 tax forms on which a parent or guardian declares the intent to claim a tuition tax credit. HB 582 requires that enough forms be printed for distribution to every public school student and that it also be available from each county superintendent.

FISCAL IMPACT:

Expenditures:

Office of Public Instruction

Expenditures will decrease by $3,388,736 million in FY 1996 and $6,842,435 million in FY 1997 for direct state aid and GTB aid paid to public school districts. State expenditures for printing and distributing the form for declaring the intention to claim a tuition tax credit will be $9,000 in each year of the 1997 biennium.

Department of Revenue

This proposal would require additional administrative expenditures to add a line for the credit to income tax form, and to provide for an additional Grade 8 FTE to review and verify the claims for credit. Total administrative expenses would increase $29,321 in FY96 and $24,534 in FY97 and each year thereafter.

Revenues:	FY96 Difference	FY97 Difference
Individual Income Tax	$(798,966)	$(2,413,381)

Net Impact:	FY96 Difference	FY97 Difference
Public School Support	3,388,736	6,842,435
Tax credits	(798,966)	(2,413,381)
OPI administrative costs	(9,000)	(9,000)
DOR administrative costs	(29,321)	(24,534)
Total(State General Fund savings)	2,551,449	4,395,520

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
To the extent public school districts have lower enrollments than would have occurred without this incentive state aid will be reduced as calculated above. If districts adjust expenditures proportionately to enrollment changes district costs and taxes will be reduced. If minor enrollment changes have little effect on total expenditures, budgets may not be reduced and local taxes would increase to offset reduced state aid. Increases in district taxes for districts who spend in excess of the BASE budget will require voter approval.

TECHNICAL NOTES:
1. It is unclear if kindergarten students in private schools would be eligible for the tax credit as Title 20, chapter 5, part 1 makes no specific reference to these children.
2. Public school districts traditionally vote a budget in April and sign teacher contracts prior to the May 10th deadline for an individual to declare their intent to claim a tuition tax credit. Those districts with a significant number of students transferring to non-public schools experience difficulties.

LONG-RANGE IMPACTS:
In future years the cost or savings to the state from HB582 will be determined primarily by increases in the tax credit and the number of taxpayers who enroll students in private schools rather than public schools. In HB582 the tax credit rises to $1000 in tax year 1997 when the credits are fully implemented and is extended to all private school students and public school students for whom parents pay tuition. Based on the average state savings of $2039 for each student who leaves a public school and a cost of $1000 for the associated tax credit, each family who removes their children from public schools to enroll in private schools would generate a net savings of $1039 if the family transferred one child. If more than 9278 such taxpayers make this change there would be an annual net gain to the state, if less than this number change there would be an annual net loss to the state. If families with more than one child make this move fewer children would have to be transferred to make the incentive cost neutral.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on March 9, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. John C. Bohlinger (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Rick Jore (R)
Rep. Judy Murdock (R)
Rep. Thomas E. Nelson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Roger Somerville (R)
Rep. Robert R. Story, Jr. (R)
Rep. Emily Swanson (D)
Rep. Jack Wells (R)
Rep. Kenneth Wennemar (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Council
Donna Grace, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 582
Executive Action:	HB 506 - Tabled
	HB 265/497 - Discussion Only

HEARING ON HB 582

Opening Statement by Sponsor:

REP. BILL BOHARSKI, House District 79, Kalispell, said he was bringing HB 582 before the Committee for numerous reasons. The most important reason is that the Legislature, during this session, is facing a $25 million increase in spending in the public education system due to increased enrollment. Because of the passage of HB 667 in the last session, education has become a formula-driven expenditure. This bill has the potential, without cutting any services, of saving $8.5 million that could be used to reduce property taxes or for any one of many other services. **REP. BOHARSKI** explained how the equalization formula works. There are approximately 8,500 parents in Montana who send their children to private schools. The bill provides that parents would receive a $1,000 tax credit against income tax, refundable if the tax liability is not that much, to help offset the cost of tuition to a private school or a public school other than the school in the district of residency. He reminded the Committee that a child sent to a public school outside the district must pay tuition and this is a very important point in insuring that the bill is constitutional. **REP. BOHARSKI** added that not only would the state save money, but the need for additional space in the public schools would be reduced, saving construction costs for local school districts. He explained that, under the equalization formula, $1,912 from the general fund is paid to local school districts for each student attending school in that district. If the parent receives $1,000, there would still be a net savings of $912.

{Tape: 2; Side: A.}

In addition to the fiscal reasons for the bill, **REP. BOHARSKI** said he had a philosophical belief that parents, poor as well as the rich, should have the opportunity to send their children to the academic institution of choice. He noted that the last three presidents have supported the concept of school choice. A change is happening in the United States relative to education and it will come to Montana as we move into the next century. The school system must move to keep up with what is happening in society. He asked the Committee to listen to the proponents with an open mind. He distributed information relative to private school tuition tax credit fiscal impacts. EXHIBIT 3.

Proponents' Testimony:

Sister Katherine Franchett, Montana Catholic Schools, spoke in support of the bill on behalf of the 4,000 students in Catholic schools. She said that the parents of these students pay twice for their children's education because they value the education their children receive in a private school. She said 85% of their graduates go on to higher education and have strong work ethics. They become productive citizens of the state. These

schools perform a public service and are adding to the general well-being of the State of Montana. The communities in which they exist support private schools. Because of this support and good management, Catholic schools are able to educate a child for less and still deliver a very high quality graduate. She said it is a myth that all families that participate in private education are rich. One-third of all the students attending Catholic schools in Billings receive financial assistance. Others struggle and do without in order to pay tuition. HB 582 would provide assistance to those families who wish to attend Catholic schools but cannot because of finances. The assistance would allow growth in private schools and relieve the impact on the local community. She said she did have some concerns about the bill. It would be simpler if the parent could provide a valid receipt from a school that qualifies with the tax form. Catholic schools would prefer wording such as "accredited by either the state or nationally accepted accrediting organization" to qualify eligible schools. She said this was important in order to maintain quality in education.

Fred Happel, Montanans for Better Government, rose in support of the bill.

Joseph R. Balyeat, C.P.A., Montana Citizen, and Chairman of the Montanans for Better Government Education Task Force, said he was a product of the Montana education system - both public and private. He spoke in favor of the bill. The text of his testimony is attached as EXHIBIT 4.

Garry DenBesten, Administrator, Manhattan Christian Schools, and President of the Association of Non-Public Schools of Montana, offered support of HB 582. He said the private schools are not out to "ruin anything that public education has done." He said the taxpayers in his area support both public and private schools. He asked the Committee to support HB 582.

Verdell Jackson, Administrator, Flathead Christian Schools, submitted written testimony in support of the bill for the Committee's consideration. EXHIBIT 5.

Ford Johnson, Former Teacher, spoke in support of choice in education. EXHIBIT 6.

Betty Natelson presented testimony in behalf of her husband, **Robert Natelson, Professor of Law, University of Montana and Chairman of Montanans for Better Government.** A copy of Professor Natelson's statement is attached. EXHIBIT 7.

{Tape: 2; Side: B.}

Roger Koopman stated that HB 582 was a bill that was all upside with no downside -- where the potential benefit is enormous and the risk zero. A copy of his testimony is attached. EXHIBIT 8.

Tom Schneider, new resident of Montana residing in Bozeman, said he was a staunch supporter of the public schools who supports options to public schools. He said he was the founder and director of an alternative public school program in Washington State that met the needs of students who did not function well in a traditional classroom environment. This type of program could be offered in Montana by the private sector. HB 582 provides equity of opportunity for all Montana students because parents with less financial means could send their children to an alternative program. He strongly urged the Committee to vote yes on the issue.

Bob Balyeat, Regional Representative, Montanans for Better Government, read a letter from a trustee of the Bozeman School District in support of the bill. He said he was in favor of the bill because schools in Montana have suffered tremendous growth pressure and school choice would have the effect of lessening the burden of public education with no effect on the present public school programs. Choice would soften the load on local bonding requests which have risen 99% in the past six years. EXHIBIT 9.

Laurie Koutnik, Executive Director of Christian Coalition of Montana, representing 26,000 Montana households, said she believes that parents are the key to education. **Ms. Koutnik's** written comments are attached as EXHIBIT 10.

Sharon Hoff, Executive Director of the Montana Catholic Conference, submitted written testimony. EXHIBIT 11.

Ed Wipf, Martinsdale Colony, said he was a proponent of HB 582 and presented written testimony to the Committee. EXHIBIT 12.

Sam Hofer, Springdale Colony, rose in support of HB 582.

Jim Hollingsworth, Valley Christian School, Lolo, urged the Committee to support HB 582.

Arlette Randash, Eagle Forum, said the Forum had been in the forefront of support for sound educational policies and they stand solidly behind HB 582.

Davis Beatty, Bozeman, said he was political director for Proposition 174 in California, a school choice initiative. He asked for the Committee's positive support of HB 582.

<u>Opponents' Testimony</u>:

Nancy Keenan, State Superintendent of Schools, emphatically rose in opposition to HB 582. She said the bill was not about choice, it was about tax credits. Proponents of the bill claim the proposal would save money, poor families would have the same options as wealthy families and public schools would be improved. She said, in fact, the bill would increase costs to Montana taxpayers and has serious flaws. **Superintendent Keenan** advised

that the system has not worked in other states because less than 2% of the students in a state take advantage of the program. This would have little effect on the cost of schools in Montana. There is not a lot of choice in the rural areas of Montana and the private schools exist only in seven of the largest counties. In states that have had a choice, there is no evidence that parents choose private schools because of the tax incentive. She said there is no evidence that private schools improve education because they are not required to have and meet accreditation standards and they are not required to hire certified teachers. They do not have to report expenditures or student information to a governing body and, most importantly, they do not have to comply with education of handicapped and minority students. Public schools will be left with students who are difficult and more costly to educate. The schools that claim they can "do it better" will have the talented and cooperative students and reject the demanding. **Superintendent Keenan** said the bill would leave Montana with two school systems, both supported by state funds, one with accountability and one without. She objected to the fact that the bill provides a tax credit, pointed out faulty language in the bill, and noted that the bill would penalize schools that have already provided services because school equalization funding is based on the prior year. She objected to the responsibility assigned to the Superintendent's Office without any provision noted in the fiscal note for the performance of those responsibilities. In conclusion, she stated the bill was not good tax policy and was not good policy for the children of the State of Montana. She asked the Committee to defeat the bill.

Eric Feaver, Montana Education Association, rose in opposition to HB 582 because he questions the constitutionality of the bill, both federal and state. EXHIBIT 13. **Mr. Feaver** stated that it might be a long time before the constitutionality of HB 582 could be determined because, if the bill is passed, the state would be in court and it would be up to the Montana Supreme Court to make the decision. There is no case law that pertains to this point. In addition, the bill is very expensive, as illustrated in the handout. He estimated that the cost would be approximately $14 million dollars. If the bill is passed, and it is found to be constitutional, there wouldl be pressure to raise the $1,000 credit. The direct revenue loss to public schools would be significant. If the bill is eventually put into effect, he predicted constant confrontation between private and public education sectors in the Legislature. The bill would require every taxpayer in the state to contribute to the private interests of certain parents who place their children in school in the non-public sector. The bill completely ignores accreditation and accountability.

{Tape: 3; Side: A.}

In closing, **Mr. Feaver** commented, "If we want to destroy democracy, and take a whack at the public schools, HB 582 is the

blunt instrument to do it." He urged the Committee to vote against the bill.

Scott Crichton, Executive Director, American Civil Liberties Union, spoke in opposition to HB 582. He reminded the Committee that the Montana Constitution is stronger and more specific than the U.S. Constitution in prohibiting aid to sectarian schools. A copy of Mr. Chrichton's remarks is attached. EXHIBIT 14.

Mary Sheehy Moe, teacher in both private and public schools, spoke in opposition to the bill.

Everett Lynn, Helena, opposed the bill. He said public schools are subject, in school bond issues, to the vote of the public. There is a matter of public control. With HB 582, private schools would be using public money for private purposes but their boards would not be elected publicly. The more people that subscribe to the private school mechanism, the more likely it is that a school bond issue will fail. State and federal governments have no business subsidizing religion. HB 582 is a thinly disguised attempt to subsidize religion.

Loren Frazer, School Administrators Association, spoke in opposition to the bill. He said that if public money is to be used in the private sector, accountability must go with it.

Don Waldron, Montana Rural Education Association, expressed the Association's opposition to HB 583.

Michael Keating, Montana School Board Association, said he was concerned about the public policy statement contained in HB 582 and the constitutional implications. He agreed with the sponsor and proponents that under the federal constitution and the first amendment, HB 582 is probably legally permissible. He was equally convinced that under Article 10, Section 6, of the Montana Constitution, if HB 582 as drafted were to be enacted by this Legislature, it would be held to be unconstitutional.

John Malee, Montana Federation of Teachers, went on record in opposition to the bill.

Helen Christensen, Montana State AFL-CIO, submitted written comments in opposition to HB 582. EXHIBIT 15.

<u>Questions From Committee Members and Responses</u>:

REP. ELLIOTT asked if the position of Montanans for Better Government was that the private marketplace works well and should be the determinate of economic behavior in the United States. **Mr. Joe Balyeat** said that, generally, he would agree. **REP. ELLIOTT** said that if the private marketplace works so well, why was the organization asking for a government subsidy. **Mr. Balyeat** replied that they were not asking for a subsidy. He said that presently there is no true free marketplace because of the

public education monopoly. This is because public education is subsidized with government dollars. **REP. ELLIOTT** said public education is not subsidized by public dollars, it is paid for with public dollars and the point remains that the private sector is asking for public dollars to subsidize parents for sending their children to private schools.

{Comments: Noise in meeting room made transcription difficult.}

REP. ELLIOTT said the free market competition exists because the choice is there. **Mr. Balyeat** replied that the rich have educational choices, but the poor and average taxpayer in Montana does not have a true educational choice because the cost to put a child in another system other than the public system is out of reach for the average taxpayer. **REP. ELLIOTT** asked if that was the reason they were requesting a government subsidy. **Mr. Balyeat** said they were asking the government to provide a tax credit and he would not view that as a subsidy.

REP. JORE asked the sponsor to discuss the fiscal impacts of the bill. **REP. BOHARSKI** said it had been projected during the special session that 1% of the students in public education would be interested in moving into the private sector. Therefore, he expanded the figure to 1.5%. In addition, he said it was interesting that the Superintendent's Office had suggested there would be an artificial cap with no more than 10% of the students in the state ever going to the private sector. He said he had no idea how they developed that figure. In countries around the world where there is a choice, the percentage usually runs 80/20.

REP. JORE remarked that school districts will suffer a loss of state aid. He asked if this was where the savings for the state would be. **REP. BOHARSKI** explained how the state school funding program works and advised that the Legislature had been asked for a $25 million increase because there are more students. If there are less students, the schools would get less money. Also included in the law is a provision that if the enrollment in a school declines, for whatever reason, the district can go to the taxpayers and ask for more money. If the voters want to do that, they can.

{Tape: 3; Side: B, Comments: Noise in room throughout this question and answer period made transcription difficult.}

REP. JORE asked if the public schools were able to handle the pluralistic society, differences of opinions and cultural diversity. **Mr. Feaver** said that is what the public schools are designed to do, and it is difficult, but it is their mission to bring the pluralistic points of view together and culture and nurture them. Those who wish to separate themselves from the public school system may do so now. He said Montana has the most liberal, permissive, home school law in the nation. Parents in Montana are moving toward choosing their own school circumstances which is their right. This bill attacks public schools because

it would take money from the public schools to promote that choice. If incentives are offered for people to make choices to separate themselves from the community at large, the community is being attack. Public schools are the manifestation of the community. It is where society best thrives in its corporate sense. This bill would deny that.

REP. HARPER said a common theme of opponents to the bill was that it is prohibited by the Montana Constitution. On the assumption that this might be a way to make the bill constitutional, he asked if home schoolers would be willing to accept any increased degree of reporting, teacher qualification, recordkeeping, curricula or materials in order to obtain this benefit. **Joe Balyeat** said a recommendation had been suggested to strike "and fees" from Section 1, sub-section 2(a). As Superintendent Keenan pointed out, there is some ambiguity. The bill would have very little, if any, application to home schools in the State of Montana. He said there is great diversity among the home school population as to whether they would want to participate in such a tax credit program. **REP. HARPER** then asked if the proponents of the bill would be willing to subject themselves to any increased control. **Mr. Balyeat** said the reason private education is more efficient, effective and parent-responsive is because it is free of government control and he would not be interested in accepting a tax credit if it meant additional control.

REP. HARPER asked Mr. Keating if it would be possible to avoid the constitutional prohibition by increased government regulation and control and, if so, to what degree. **Mr. Keating** emphasized that it would be a presumption of him to speak on behalf of homeschoolers or other components of private schools. Speaking on behalf of the Montana School Boards Association, he said he is reasonably confident that Article 1, section 5, of the Montana Constitution, would not be disrupted by the enactment of HB 582. He said he did not see any excessive entanglement by the state in matters of religion in the bill as drafted. If there is a move toward a greater degree of entanglement by involving the state more directly in administrative considerations that might have an effect upon religion, he would have some concern about the constitutionality of the bill. He said he remained convinced that under Article 10, section 6, of the Montana Constitution, the bill would not pass a constitutionality test.

REP. WELLS said the State Superintendent indicated the bill would cost taxpayers more than it would save and pointed out examples of why there would be no savings. He asked for comments in relation to previous comments from the sponsor indicating that there would be a $25 million increase in funding because of the increase of 5,000 students in Montana each year. He asked why, if the same number of students were leaving the system, there would be no savings. **Superintendent Keenan** said Rep. Boharski had not counted the 11,000 students who are already in private schools and he assumed there would be an exodus of an additional 1.5% of students to be added to those already in the private

schools. These students won't all be leaving the same school and one child, or five children, leaving a school would not accomplish anything when the school must still pay for teachers, materials, utilities and maintenance. All overhead costs will remain. In addition, based on the ANB system of school funding, for every child that leaves, the district loses money even though they provided service in the preceding year. The school then has two choices -- they can raise local property taxes or diminish the programming in the school to cover the cost. **REP. WELLS** asked the Superintendent if she was aware of the study done in Georgia where students were tested and it was found that the quality of education in both public and private went up and they attributed it to competition. **Superintendent Keenan** said she was not aware of the study. **REP. WELLS** asked if she believed that competition in business, sports, or any part of society improves performance. **Superintendent Keenan** replied that she believed competition would do that in some cases. There is competition in Montana schools because there is nothing to prohibit any child from going to another private or public school. **REP. WELLS** asked if she would agree that the cost of sending a student to a private school could prevent a student from going there. **Superintendent Keenan** said there is choice in Montana schools and she did not think cost prevented any child from attending a private school. The government must provide public education. The private sector has not stepped forward and said "we will do it and it won't cost the government or the public anything." She stated, "The day Lee Iacocca walks into this Committee and says I will educate your children and it won't cost you tax dollars because the private sector can do it, I will believe that the competition you are talking about exists but, until then, this is a tax subsidy, a government handout to the private sector for education and it is not in the common good of the state or nation."

REP. WELLS said Mr. Feaver had commented that the proponents of the bill want taxpayers' money in their pockets, yet all the opponents of the bill represented the public school system. He asked if Mr. Feaver would agree that the public schools were taking taxpayers' money and putting it in their pockets and the taxpayer is not given any choice in the matter. **Mr. Feaver** said it is money for the common good and the taxpayers have a choice in who will govern the local school districts, serve as the state superintendent, and will be representatives on the Taxation Committee. The people have a choice through their elected officials to determine how the public schools will be run. In the private sector the public does not have that choice. **REP. WELLS** said that was a reasonably good answer but he does not have a choice in paying into the system. **Mr. Feaver** said he would disagree because that is what the House Taxation Committee is for -- it makes choices as to what will go into the system. He noted that the Taxation Committee recently heard a bill that would have allowed an optional levy to educate emotionally disturbed children and the Committee chose not to adopt that bill. This illustrates that the Committee does have that choice.

REP. SWANSON asked if there would be another fiscal note. **REP. BOHARSKI** said that, according to the Rules of the House and Senate, a fiscal note was being prepared but was not available prior to the hearing. **REP. SWANSON** asked if she was correct that homeschool students were not covered. **REP. BOHARSKI** said they were not because the bill provides a tax credit for tuition. The original bill in the last session included tuition and textbooks. Homeschoolers do not pay tuition. **REP. SWANSON** asked if tuition was clearly defined in the bill. **REP. BOHARSKI** said that was an area of concern and amendments would be submitted to clarify the issue. She then asked how the $1,912 figure was arrived at and **REP. BOHARSKI** provided an explanation.

{Tape: 4; Side: A.}

He explained how he had determined that there would be approximately $7 - $8 million savings to the state. He also clarified that students already in the private school sector would not qualify for the tax credit because the program would be phased in.

REP. ELLIOTT asked if it was true that private schools can educate children at a lower cost per student than the public schools. **Sister Catherine** replied that they could. **REP. ELLIOTT** asked if that was because they were free of government control. **Sister Catherine** said they abide by certain regulations in the code that apply to private schools; for instance, they follow the general course of study prescribed by the state. **REP. ELLIOTT** asked if the admission standards were governed by the federal government. She replied that they were not. **REP. ELLIOTT** asked if that meant they could refuse students who are developmentally disabled or have a attention deficit disorder that might disrupt the classroom and make it difficult to conduct the business of education. **Sister Catherine** said they do make decisions about who could benefit from their program because they do not have sufficient funds to provide the kind of services that public schools can. **REP. ELLIOTT** said the public schools are mandated to provide services to those children. He asked if private schools were mandated to provide the same services, whether the cost for education would still be lower. **Sister Catherine** said that if they were mandated to provide services to these children there would also be mandated funds. She said the way the Catholic schools operate, a great deal of bureaucracy is not required because they do not have the responsibilities the public system has and they do not have layers and layers of administration. They are able to make decisions that are pertinent to each school. **REP. ELLIOTT** asked again if they had to educate the same kinds of kids that public schools are mandated to educate, regardless of where the money came from, whether the costs per student would rise. **Sister Catherine** agreed that they would.

REP. ELLIOTT asked Mr. Hofer if Springdale was a Hutterite Colony and he replied that it was. **REP. ELLIOTT** asked if they finance

far as the bill was concerned. He said it was not his responsibility as a Legislator to debate that issue. It was important to remember -- there was nothing in the bill that would give money to private schools. What the bill would do is assist parents in educating their children. He said the quality of the private schools is there because if it were not, parents would not be sending their children. **REP. BOHARSKI** said he did not think the Legislature wanted to get into the business of regulating private schools. There is a question of whether it could be done under the Constitution. He said there is no question that the bill would qualify under the federal Constitution. He said the problem would be under the Blaine amendment and the purpose of that amendment. The question is whether the tax credit could be considered an indirect appropriation. **REP. BOHARSKI** said he believed the purpose of the Blaine amendment was to insure state neutrality for religion and to prevent entanglement. **REP. BOHARSKI** called attention to the severability clause in the bill which provides that if any portion of the bill were to be declared unconstitutional, the balance of the bill would remain intact. The focus of the bill is on parents who should have the right to choose to the greatest extent possible where their children should be educated. The opponents maintain that the choice is there now, and there shouldn't be a choice without regulation. The choice is there now -- for those who can afford it. He said there should be support for those parents who choose to send their child to another educational institution, public or private, other than the public school in the resident district, especially when it is fiscally beneficial to the taxpayers of the State of Montana. Competition in the system is good and will do nothing to harm the public school system. The money will not go to subsidize private schools, it will be going to assist parents. **REP. BOHARSKI** said the bill would need some technical amendments to clarify language. He thanked the Committee for the long hearing.

ADJOURNMENT

Adjournment: 11:55 a.m.

CHASE HIBBARD, Chairman

DONNA GRACE, Secretary

CH/dg

EXHIBIT 4
DATE 3/9/95
HB 582

HB 582 School Choice Tuition Tax Credit Hearing

(testimony of Joseph R. Balyeat, CPA)

Mr. Chairman, Representatives, my name is Joe Balyeat. I'm an author, certified public accountant, lifelong Montana citizen and taxpayer. I am entirely a product of Montana's education system - both public and parochial schools; graduating from U of M in 2½ years with straight-A high honors. I was a National Merit Scholar all three years. I currently serve as chairman of Montanans for Better Government education task force. I believe in quality education; and urge you to support this bill.

HB 582 is one of those rare, rare opportunities for you as a legislator to both enhance choices for Montana families and save millions of dollars for taxpayers as well. And it is virtually risk-free. By phasing in the proposal as a credit for increasing education costs, large up front payouts to the present private school population have been eliminated. On the other hand, Rep. Boharski's projected savings are obviously based upon very conservative numbers of private school transferees. The upside potential for longterm savings to State and local governments is enormous. Please note that in addition to specific income tax relief for school parents; **this bill also provides general property tax relief to all Montanans because of the connection between local school mill levies and public school ANB.**

With the influx of school age children to Montana, public schools are bursting at the seams. In just the last six years in my city of Bozeman, school bonding levies have risen 99.98%. Communities across Montana are facing similar frightening new construction costs to accomodate projected enrollment increases. Meanwhile, private schools are ready and waiting to handle higher enrollment. An official at Butte's Catholic junior high school told us this week that they recently lost 30 students due to financial considerations and that they would welcome passage of this measure. Just yesterday we completed a statewide poll of 40 private schools with present enrollment totalling 5,269 students. These schools claim that in their present facilities they could easily absorb 1,961 new students. This averages almost a 40% potential enrollment increase in the private school sector. This is almost double the 20-25% enrollment increase potential required by Rep. Boharski's fiscal projections. Moreover, many of these schools already have expansion plans in process. It would be a fiscal travesty for Montana legislators to ignore this obvious solution to the school budgeting crunch and student population explosion.

Moreover, the freedom of school choice offered by this bill would improve the efficiency and effectiveness of our public education system tremendously. **Without the forces of free market competition keeping costs in check, Montana K-12 total education costs have ballooned to well over $6000 per student per year.** It doesn't take a National Merit Scholar to see that spending $1000 to help send that child elsewhere would result in enormous savings for MT taxpayers. In addition to these immediate savings, once the present education monopoly is converted into a competitive free-marketplace, it is a certainty that public education costs per student would drop dramatically and schools would become even more responsive to parent's concerns. Parents need consumer power. A 1992 study commissioned by your counterparts in the New York State Senate supports this argument comprehensively - **competition will improve public schools.**

But the present monopoly system provides no choice whatsoever for average parents to choose the best educational environment for their children. Today, only the rich and privileged have educational choice. **In the 1990 U.S. Congress, out of 535 members, only 1 congressman had his children enrolled in D.C. public schools.** President Clinton has made the choice to enroll his own daughter in a private school. In fact, Pres. Clinton himself is the product of a private school education. His mother has stated publicly, "I wanted Bill in a good school. Everyone told me

what a fine school the nuns ran - so I decided I'd put Bill in there right away." Her statement contains four crucial words that are the essence of the school choice movement. "I wanted... I decided". The **Ohio Governor's Commission** on Educational Choice stated in 1992 that **"The choice issue is grounded on the basic premise that the child's parents are best suited to choose the school which will develop the highest potential of the individual child."**

The rich and privileged have a right to choose, but lower income Montanans have no such opportunity to choose unless you give it to them. The tremendous thing about HB 582 is that it would provide such increased choice opportunities for Montanans while saving the state millions of dollars as well.

Your colleagues in the New York State Senate commissioned a study on school choice last year. The conclusions of that study were as follows:

> "*Conventional educational reforms have generally been unsuccessful in halting the decline in [school] performance and have little potential for doing so... *The key to better schools is more effective school organization; the key to more effective school organization is greater school autonomy; the key to greater school autonomy is competition and parental choice.... *Although the goal of educational choice is to give our children a better education, it would also eliminate stultifying and expensive educational bureaucracies and may yield significant savings... Superior education is achieved in private schools where the per-pupil cost is less than half the cost in public schools."

Your counterparts in New York and elsewhere in this nation are moving forward on school choice. I encourage you to not be left behind. In late 1991, the Pennsylvania State Senate passed a school choice program granting $900 to parents of each student. Wisconsin has a successful pilot program in Milwaukee granting $2,500 of state funding to parents to send their children to the public or private school of their choice. "More than a dozen states [already] offer some degree of public school choice." Moreover, advanced societies around the world recognize the basic right of parents to choose the best education for their children. Germany, Japan, Australia, Western Canada, England, France, Ireland, and many other advanced countries provide some form of school choice to parents; and these countries rank consistently high in test scores. People around the world are abandoning state-controlled economies and realizing the benefits of free market competition. Countries around the world have likewise rejected state-run educational monopolies and their children are reaping the benefits of school competition.

It is only natural that some within the education establishment would wish to maintain their lucrative monopoly. Despite positive results from around the world, they will argue that such a competitive system of educational choice won't work in Montana, or anywhere in America for that matter. That's nonsense. We already have successful nationwide working models of educational choice with us today. Many of you in this room reaped the tremendous benefits of the G.I. Bill; which grants funding to veterans to attend the public, private, or church-run college of their choice. Instead of building gigantic new schools and gigantic new bureaucracies to educate veterans, the government simply and efficiently provided funds for them to go to presently existing schools. Within four years, private college enrollment doubled. Yet today we ignore the lessons of the G.I. Bill and instead continue to bankrupt the taxpayers of Montana by pumping ever more money into a bureaucratic monopoly which never seems to have enough; though it is spending more now to educate a first grader than most of you veterans spent on your entire college education. Why don't our children deserve a G.I. Bill for kids?

Moreover, in 1990 the U.S. enacted the Child Care and Development Block Grant. This program provided $520 million in vouchers for parents to choose the program of their choice to provide social-educational services for children up to age 13. This includes programs for pre-school children, summer programs for school-aged kids, and before-and-after school programs

as well. Constitutionally, these vouchers may be used at sectarian or religious institutions because they are "aid directly to the parent, not to the provider." Now the $64,000 dollar question is this - if parental choice for pre-schoolers is a good idea, why isn't it a good idea for K-12 kids? If parental choice is a good idea in the summertime, why isn't it a good idea in the fall and winter? If parental choice is a good idea in the afternoon from 3:00 to 5:00, why isn't it a good idea in the morning?

Let me tell you why bluntly. Because summertime programs and preschool programs and after-school programs do not have a powerful bureaucracy fighting against them to maintain their lucrative monopoly over the status quo. That's the only difference. It is only natural that those who gain financially under the present system would oppose any attempt to change it. They will attempt to convince you that this proposal is a radical, dangerous, unconstitutional undertaking. To the contrary, this proposal is not radical, it is mainstream. This school choice proposal is fully endorsed by the 1994 Montana Republican Party platform. Similar school choice concepts have been recently endorsed by President Clinton as well as by all of his Republican presidential opponents.

Neither is this proposal unconstitutional. HB 582 was in fact modelled after the well-known federal Child Care Tax Credit (Form 2441 for those of you who have not yet filed your returns). It is common knowledge that this child care credit permits parents to place their children in the religious or secular childcare or pre-school setting of their choice with no restrictions whatsoever. The fact that federal tax dollars are then credited back to the parents to help offset child care expenses is inno way a violation of the constitution. HB 582 is no more radical, and no less constitutional than the common Child Care Tax Credit.

I hold in my hand a seven page synopsis prepared by the general counsel of the United States Catholic Conference just 7 days ago. This memorandum, which reviews all the major court cases on this issue during the last 50 years, concludes that aid given directly to parents, rather than directly to religious institutions, will in no way be deemed a violation of the Constitution's Establishment Clause. Moreover, the opinion concludes that tax relief proposals such as HB 582, are the best and safest mechanism for accomplishing this parental aid. The chief co-author of this memorandum, Associate General Counsel John Liekweg of the U.S. Catholic Conference, has reviewed HB 582 extensively. In a direct phone conversation with him yesterday afternoon, Mr. Liekweg assured me that (with a couple of minor wording clarifications) this bill is a sound, constitutionally defensible document. Mr. Liekweg's memorandum will be entered into the record for your review.

So I encourage you to not be intimidated by the emotional, unfounded attacks of special interest education power-brokers. The taxpaying public is overwhelming in favor of school choice. During the last special session, dozens of legislators supported the school choice tax credit bill. Despite being openly targeted for defeat by education power-brokers last election, not a single one of those legislators was defeated last election. Mostwon by subsantial margins. Voting Montana parents overwhelmingly want freedom of educational choice, and voting Montana taxpayers overwhelmingly want tax relief and fiscally wise, innovative reform of government bureaucracies. HB582 gives the Montana public what we want from this legislature.

Thank you, Mr. Chairman and members of the committee for granting me this hearing. I request that a written transcript of my testimony be added to the record of this hearing and distributed to all the members of the committee.

EXHIBIT 5
DATE 3/9/95
HB 582

Parents should be able to choose the school their children attend. Competition has helped our airline and telephone companies as well as the consumer. School choice will do the same for schools. Parents will get more variety and better quality for a cheaper price. This bill will ultimately save the State of Montana millions of dollars because the average cost per student is $6,200 per year for each student enrolled in the public school system. Parents need freedom of choice and America needs competition to provide the best education possible for our young people. Private business has a lot to offer education and this bill will make it financially feasible.

Parents are in the best position to determine the quality of a school program. Academic rigor is just one small facet of the program. Character development, school environment, discipline, job skills and their child's enjoyment of school are other factors very important to parents.

Every individual is unique and needs diversity and accomodation to develop his or her potential. Small specialized schools are needed to provide flexibility to meet the needs of those individuals who have dropped out of school or have chosen home schooling because there are not affordable alternatives.

Verdell Jackson

EXHIBIT 6
DATE 3/9/95
HB 582

October 7, 1994

Governors Task Force
to Renew Montana Government

Dear Sirs:

I am writing this letter in regard to the public school choice section of the Task Force proposal. The opinions of a number of Montana school superintendents and financial officers have been obtained.

The Task Force proposes that the state bear the cost of out-of-district tuition rather than having the student's family bear this cost. The Task Force proposal also makes an attempt to streamline the funding process involving school-to-school tuition and out-of-state tuition.

This aspect of the proposal may well have merits. It does not, however, address the subject of choice in any truly meaningful way. The concept of incentives is an important and inherent element in any workable choice program. The existing Task Force proposal does not address the issue of providing incentives for the receiving school district.

Numerous disincentives now exist which may well prevent school districts from accepting out-of-district students. According to discussions with a school finance officer, one disincentive is the concern about transfer requests from special need and handicapped students. Meeting the needs of these students can be very expensive. This issue needs to be clarified in the proposal. Other concerns were expressed about the delay of state funding and the amount of state funding. The changes that the Task Force proposes could result in the creation of additional disincentives and the actual reduction of public school choice as it now exists in Montana. It must also be noted that the concept of a school charter program was not addressed in the Task Force proposal.

Thinking about the issue from the viewpoint of a larger perspective reveals that this particular choice proposal attempts to streamline the existing system. It does not make any meaningful attempt to utilize public school choice to change the system. There is a fundamental question here: Can public school choice by its very nature have a positive effect on the quality of education?

Educational choice is a philosophy that has evolved over the last 25 years. Many articles and books have been written about it. Numerous organizations have been established to promote and study this subject. "Educational Choice" has in effect become a movement with its own literature, philosophy and organizations.

The centerpiece of educational choice philosophy is free market dynamics. Great perspective can be gained by viewing the pre-Gorbachev economy of the Soviet Union in the light of the thriving U.S. economy. This perspective reveals the positive force that the free market has on society. These free market forces include the free choice of speech and ideas, as well as the free choice of goods and services. The close relationship between free market dynamics and the quality of goods and services is also revealed.

Public school choice is then considered by many who have studied the issue carefully to be the "lame stepchild" of the school choice movement. Public school choice is considered by these thinkers to be far removed from free market dynamics and, therefore, ineffective in its ability to improve the quality of education.

There is one more issue that I wish to raise here. This issue is the impact that the combination of free market dynamics, choice and the forces of communications - information technology will have on the future of education. During the last week of September, 1994, a discussion was aired on C-SPAN in which Bill Gates of Microsoft demonstrated a well-constructed example of computer-assisted interactive TV education. This sort of technology is but in its infancy and has enormous implications for the educational establishment including higher education.

A key factor in the evolutionary process that is occurring lies in the word "choice". Vast new avenues of choices will be charted by the advent of the information superhighway. The concept of choice ties it all together and includes the following aspects: (1) the "choice" found in a well-functioning democracy; (2) the "choice" found in a healthy free market economy; and (3) the "choice" enhanced by the ever-expanding world of communication technology.

The invigorating waters that flow from the well spring of the free market economy are at this time percolating into our calcified educational institutions and are dissolving its layers of inertia and obstruction. Those that are entrenched in rigid bureaucratic systems will simply become irrelevant as the waters of freedom and choice flow around them.

Sincerely yours,

Ford Johnson
404 West Alder
Missoula, Montana 59801
721-7712 (home)
728-3957 (work)

EXHIBIT 7
DATE 3/9/95
HB 582

Testimony in Support of House Bill 582

by

Robert G. Natelson[1]

Mr. Chairman; Members of the Committee:

My name is Rob Natelson, and I am Chairman of Montanans for Better Government. I'm also Professor of Law at the University of Montana School of Law.

I cannot be here in person today (as I was here when I testified for a similar measure during the 1993 special session) because this hearing was scheduled in the time slot in which I teach a very large required class at the law school. I know that opponents will enjoy criticizing me for not being here, but that's nothing compared to what they would say if I cut class to show up!

Of course I do not speak for the University or the law school, but I believe my views on school choice do represent the mainstream conclusions of those educational researchers not employed by the government school system. School choice also represents the mainstream view of the Republican Party -- for example, President Bush, a moderate Republican, supported a choice plan more intensive than the plan embodied in this bill. Similarly, school choice represents the mainstream views of the American people. National polls consistently show large majorities for choice and that voters are more likely to elect candidates who favor choice -- even though the anti-choice forces have won some referenda by out-spending reformers on the order of 10-1.

Here in Montana, school choice is part of the state Republican platform. Every incumbent state legislator who voted for choice in the 1993 special session and sought reelection was in fact re-elected, including races where challengers raised the issue.

Now, before turning to the positive aspects of this bill, I would like to anticipate some of the opponents' arguments.

The opponents will claim that school choice is unconstitutional. Under the U.S. Constitution, this is no longer a viable argument;[2] under the state constitution, it may be a

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[1] Professor of Law, University of Montana; Chairman of Montanans for Better Government. The opinions expressed in this testimony are his and not necessarily those of any other person or institution.

[2] *Mueller v. Allen* 463 U.S. 388 (1983) (tuition deductions upheld); *Witters v. Wash. Dept. of Services for the Blind,* 474 U.S. 481 (1986) (tuition vouchers upheld); Luthens v. Bair, 788 F.Supp. 1032 (S.D. Iowa 1992); Campbell v. Manchester Board Director, 641 A.2d 352 (Vt. 1994) (reimbursement for tuition paid to religious school upheld).

viable argument against *vouchers*, but is not much of an argument against *tax credits*.[3] On the contrary, during the debate in the 1993 special session, Professor David DeWolf, a constitutional law expert from Gonzaga University, testified that any attempt to use Montana's so-called "Blaine Amendment"[4] against tuition tax credits might result, not in the voiding of the credits, but in the voiding of the *Blaine Amendment* as violating the religion clauses of the First Amendment to the U.S. Constitution.

No doubt if this bill is passed the special interests will sue to overturn it; lawsuits are their standard response to defeat in the democratic process. But we need to remember that they are not invulnerable, as demonstrated when they lost in their recent effort to abolish the right of Montanans to vote on taxes.

Opponents may claim this bill would cost money. Practical experience in places with public-private school choice proves the opposite. British Columbia, for example, implemented a choice plan in 1978. Since that time, the percentage of children in private schools has gradually risen, saving British Columbia taxpayers millions of dollars. Similarly, the public-private high school choice plan in place in Vermont for over a century (upheld last year by the Vermont Supreme Court) has proved highly cost effective. And this counts only the direct tax savings, not the efficiencies arising from competition itself. The exact dollar amount of savings from competition are never known in advance, but they are usually substantial.

Opponents may argue that Senate Bill 370 -- which purports to be a charter schools bill -- is a substitute for this measure. Senate Bill 370 is an object lesson in how a good idea can be mangled when caught between the millstones of lobbyists and legislature. The charter school concept contemplates breaking the monopoly of the local school board; under S.B. 370, however, charter schools can be sponsored *only* by the local school board. The charter school concept contemplates ending school board control and collective bargaining rules; S.B. 370 would largely keep both. The charter school concept emphasizes the rights of parents and groups of entrepreneurial teachers. S.B. 370 emphasizes the rights of school district trustees, the state board of public education, and the unions. At its *best*, the concept of charter schools is only a halfway step toward true choice. But S.B. 370 is not even a real charter schools bill; it's like hanging a sign saying "elephant" on a dog, and then calling it an elephant.

Next, I respectfully caution you against relying on research on choice from the Office

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[3] See *Montana State Welfare Bd. v. Lutheran Social Services of Montana*, 156 Mont. 381, 480 P.2d 181 (1971), where under the (stricter) version of the Blaine Amendment in the 1889 constitution, the Montana Supreme Court held that payment of medical expenses on behalf of indigent mothers did not "indirectly" benefit religious adoption agencies, even though those agencies were thereby relieved of having to pay such expenses. The point was that the program was designed to benefit *mothers*, not religious institutions. Similarly, HB 582 is designed to benefit *children* not religious schools. The court noted that not only were such payments *permissible*, but that refusal to make them to a mother who chose a religious adoption agency might violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution!

[4] Mont. Const., Art. X, §6. *Montana State Welfare Bd. v. Lutheran Social Services of Montana*, 156 Mont. 381, 480 P.2d 181 (1971) would seem to support such an argument because the court was doubtful of the ability of the state to discriminate against religious institutions.

of Public Instruction. I've learned the hard way that OPI's work is not always reliable. In the 1993 choice debate, for example, Superintendent Keenan argued that private schools would engage in invidious discrimination, apparently unaware that state law already forbids private schools from engaging in this sort of conduct.[5] At that time also, OPI argued that only 2% of public school children would switch to private education alternatives. But the basis of that argument turned out to be a study of programs in which private education alternatives were excluded! You may also recall that in the special session, OPI admitted gross miscalculation of state equalization aid formulas. And most recently, you saw a written exchange between myself and Rep. Peck. In that exchange, Rep. Peck incorrectly claimed that the Census figure that shows that Montana has more per capita school employees than any other state in the nation was based on extrapolation from only one Montana school district. In fact, a check with the Census Bureau revealed that it was based on at least 146 school districts. I am not certain that Rep. Peck relied on OPI research; but if he did, that would be consistent.

Choice opponents impliedly concede the findings of independent studies to the effect that schools operating in an environment of choice and markets work better than schools in an environment of monopoly and bureaucracy. But they argue that the research isn't fair, because private schools can "cream" the market and refuse to accept students they don't want.

When opponents respond in this way, they reveal that either they haven't read or that they haven't understood the research. What the studies conclude is not that private schools are necessarily better than public schools, but that *any* schools -- public or private -- are better in an environment of choice and markets than in an environment of monopoly and bureaucracy. Moreover, the researchers who conduct these studies are not stupid; they know there are differences between public and private schools, and when they conduct their studies it is standard procedure to compensate for those differences. Yet even *after* full compensation, the results are clear: education in an environment of choice and markets works better than education in an environment of monopoly and bureaucracy.

Now as to the merits of this proposal: Not very often do you have an opportunity to vote on a bill in which almost everyone will come out a winner.

State and local taxpayers will win because for every $1000 credit, they save an average of about $7000. This is only an average, of course, and will vary according to place and time. In areas of rapidly increasing enrollment -- which is where most of the private schools exist already -- the savings will tend to be higher because of reduction in start-up costs.

Private schools will win because they will be able to offer their services to a wider market. New demand will be fueled by families now financially locked out of effective choice. New demand will stimulate educational alternatives to arise in parts of Montana where alternatives do not exist today -- including rural areas.

Public schools will win because they will learn from the experiences of their competitors, as happens in any competitive market. This learning will benefit even public schools not facing direct local competition. Moreover, competition would create pressures to

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[5] Mont. Code Ann. §§49-2-101(6) and 49-2-307.

relax mandates and free public school employees to do their job as they know it can be done. That portion of the financial savings not used for tax relief could be used to increase per pupil support of public education. The beneficial effects of private school competition on public schools are not speculative; they are documented in several studies.[6]

Teachers would win -- especially good teachers. In the system today, teachers are treated too much like bureaucrats and too little like professionals. Choice would re-create the schools of an earlier time, in which the teacher-family relationship was more like the relationship between professional and client. In a competitive environment, good teachers would be in special demand, and no doubt would command salaries somewhat higher than those they receive today.

The debate over choice is one area in which there is a sharp conflict of interest between teachers and the union officials who purport to represent teachers. An environment of choice might result in fewer teachers being added to the payrolls -- although this is uncertain[7] -- but it also would result in good teachers being better paid and enjoying more job satisfaction. Union officials, on the other hand, make out best when the payrolls are crammed with poorly paid, dissatisfied personnel. Teachers of Montana, my point is this: Choice is in your best interest, and on this subject the personal interests of your union officials are diametrically opposed to yours.

And finally, and most importantly, under choice *children would win.* All too often the current system tries to put children into one-size-fits-all education. But one-size-fits-all doesn't make any more sense in schooling than it makes in trousers. An environment with more choice means an environment responsive to the different needs of children and the different values of families. And because under choice each family can opt for the approach best for their children, an environment of choice will be an environment far less riven by all those unresolved -- and perhaps unresolvable -- education battles about OBE, sex education, look-say vs. phonetics, progressive vs. traditional, and religion vs. secularism. Those conflicts could be resolved to the satisfaction of all, because each family could choose the schooling method it deems best.

Mr. Chairman, Members of the Committee: Based on my contacts from all parts of the state, I can testify that Montanans are becoming increasingly doubtful over the ability of this legislative session to accomplish the kind of fundamental change you were sent here to accomplish. But this is one area in which you can ease that doubt -- decisively and dramatically -- and reaffirm the faith of the people who sent you here: Enact school choice!

Thank you very much.

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[6] E.g. Couch & Shughart, *Private school enrollment and public school performance*, 76 PUBLIC CHOICE 301 (1993).

[7] A recent study of privatized industries found *increases* in employment after privatization, rather than the expected decreases. This was more than paid for by greatly increased productivity. William L. Megginson, Robert C. Nash & Matthias Van Randenborgh, *The Financial and Operating Performance of Newly Privatized Firms: An International Empirical Analysis,* 49 J. FIN. 403 (1994).

EXHIBIT 8
DATE 3/9/95
HB 582

TESTIMONY OF ROGER KOOPMAN

Supporting HB 582

MR. CHAIRMAN. This is one of those bills that is all upside and no downside -- where the potential benefit is enormous and the risk is zero.

While I find the fiscal arguments in favor of this bill to be extremely compelling, the educational arguments are even more compelling. And the moral arguments are perhaps the most compelling of all.

Our primary focus should always be on what is best for our children. That's why I like to call this bill "The Student Empowerment Act", because it puts the education **consumer** in his proper place at the **head** of the line. By enhancing freedom of choice, HB 582 liberates Montana's educational marketplace and provides a powerful stimulus for innovation, competition, and the enrichment of educational opportunity. The individuality of students -- their values, their learning styles, their special needs -- are far better addressed in an atmosphere of diversity and freedom. That is exactly what this bill would accomplish -- producing all winners and no losers.

At the same time, this bill affirms a very sacred principle: the right of parents to choose how their children will be trained and educated. Clearly, it is not the intent of this legislation to endorse any form of education over another. It's simple purpose is to make it **easier** for parents to choose. And frankly, Mr. Chairman, the more we can encourage parents to become better involved in their children's education, the more **everyone** benefits.

Perhaps the most oft-repeated and fallacious argument against school choice is the assertion that "it is wrong to use public funds (through a simple tax credit to parents) to 'subsidize' private schools." This is a strange twist of logic, that jettisons the whole principle of government **of, by, and for the people.** For whose money are we really talking about here -- the government's or the people's? When did we suddenly start accepting the notion that the tax dollars we give to government are no longer the people's money? When did we abandon the idea that the public treasury belongs to the **people** -- that government holds it in trust only? And isn't it curious that while nobody objects to "public funds" being directed to private colleges through the GI Bill, a mere **tax credit** (<u>not</u> a government voucher) to promote choice in K-12 education is attacked as radical and downright unamerican?

In reading over the language of House Bill 582, I do have one serious concern. In Section 1-(2), the bill does something (inadvertently, I believe), that runs sharply contrary to the whole

concept of this legislation. By limiting qualifying expenses to "tuition and fees", the bill has the practical effect of limiting parental choice to the types on non-public education that conform with these parameters. I would suggest that the last thing we want to do is establish in law, state "approved" and "unapproved" parental choices.

Yet a significant amount of the costs of many private schools are in the form of textbooks and other materials that are passed on to parents directly, rather than in the form of fees or tuition. Many if not most home-based schools would fall into that category as well. It would be profoundly wrong to discriminate against these highly successful forms of education, and I can't imagine that it would be the intent of the legislature to do so. To resolve this, I would strongly urge that the committee amend this bill by adding, after "fees", these three words: "and curriculum materials."

With that amendment, I would strongly support this bill. Without it, I would have some genuine concerns.

Testimony of DOD BA[illegible]

22 Whitehall
Great Falls, MT 59404 2248

John Taylor Gatto

EXHIBIT 9
DATE 3/9/95
HB 582

teacher of Year
New York School District

Billings conference
1992

"the best way to start the long trail out of the school mess we're in is to give people back the school money currently deducted in taxes." "to encourage a full free market range of alternative forms of schooling to develop and to trust people to purchase the school services that are best for them."

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① Intro: Businessman from G.F. area
Area Representative for M.B.G. in Cascade County, Lewis & Clark Co. & Choutau Co.
Family (most importantly)

② Testimony: yesterday (business day) yesterday 4/20 because I sold (after tax comm. learning) and, who- I could choose where to sell it.

③ Example: Chrysler V.S. G.M. ~~the opponents~~
→ Please notice who is against this bill: not parents who are afraid of having too many alternatives available to them

~~3~~

④ Quote: J.T.G (above) ↑

⑤ Challenge: I ASK [redacted] you support real tax savings not just cutting a little from a budget increase

and at the same time improve our educational system by offering a little competi

so parents can be empowered to build

it more than likely will be the same

paid representatives of those that take from the taxpayers

2) or parent who

EXHIBIT 10
DATE 3/9/95
HB 582

Mr. Chairman, members of the committee:

For the record, my name is Laurie Koutnik, Executive Director of Christian Coalition of Montana, our state's largest family advocacy organization, and I rise in support of Rep. Boharski's HB 582 presented here today.

Giving parents a choice in choosing an educational setting for their children is surely not a new concept, but one whose time for serious consideration and support has arrived. In fact, we know the current Congress is seriously discussing it, President Clinton has come out in favor of it, and all the current Republican contenders for the '96 Presidential bid all support it. Why? Because it not only has support of the people in keeping with the American tradition of choosing for one's self, but because it makes good sense, both rationally and fiscally.

America was built on a free enterprise, market approach. We know that competition is healthy and good. As in any free market approach, when consumers have a choice, suppliers benefit from the drive to pursue service and quality for customers.

America has always taken a stand against monopolies which deprive freedom of choice. Today, there is nationally the recognition that the current public education system has become a monopoly.
Many fine articles and books have addressed this concern and problems this monopoly presents. Thomas Sowell's book "Inside American Education: The Decline,The Deception, The Dogma," concludes that to break the monopoly public schools have on education, the public must be allowed to "opt out" through various school "choice" programs that let children from all walks of life, no matter of race, religion or socio-economic means, into better schools, public or otherwise.

Currently, of the $33 billion we spend on the federal level for education, 70 percent never reaches the classroom. It makes sense to convert these monies into financial incentives that will allow parents through a tax credit approach to send their children to the best schools in their community, whether they are private, public, or parochial. Many parents contend that the private education they would prefer for their children is an option only if tuition tax credit is made available. In fact, some parents contend that private education is denied as a choice because educational monies, through their taxes, are consumed by an education system that is always demanding more funds. There is no end to its appetite for our tax revenues, spending upward of nearly sixty cents out of every dollar raised here in Montana, while private schools have consistently operated at about ½ the cost. Definitely the government, both state and federal, would have a reduction in educational expenditures.

A recent Newsweek nation-wide poll indicates that 23% of parents with children in public schools might switch to private schools if tuition tax credit is allowed. However, given the public perception in Montana that public education is doing a good job, the percentages would be a lower rate. None the less, reduction in tax revenues could be achieved if only a small percentage as low as 5% shift from public to private schools.

It is highly doubtful that a tax credit could kill the public education system, however, it could

provoke a " belt tightening" effect on the ever mushrooming expense it demands. Tuition tax credits would definitely take the fat out of public education, decrease federal monies needed to help reduce the national deficit, and would force schools to pursue cost effectiveness. In a time when we are looking for ways to assist our national financial dilemma, every little bit will help. In fact, I submit, if tuition tax credit proposes the crumbling of public education, as some here might want you to believe, and public ed cannot stand on its own merits, should we continue to prop it up?

Tuition tax credits would instead force public school systems to provide quality education that meets the demands of parents and future academic needs of children.

You will hear from opponents that tuition tax credit will bring certain disaster to our schools in Montana. Some will propose that this approach would establish an educational caste system with advantaged youth leaving the poor and disadvantaged behind. This is ill founded. I am all too aware of private and parochial schools who have in fact " picked up the tab" so to speak for those less fortunate among us or those expelled from public ed for various reasons. Many a time, I remember, the nuns and priests in the local diocese, being the only ones caring enough to try again with those who did not fit in conventional learning settings. Never minding their handicap, they were encouraged, like the rest, to pursue the best they could do while teachers went out of their way to help and students were never tolerated to think poorly of another. Personal responsibility and accountability was emphasized, and charity abounded.

While other will contend that money need to meet maintenance costs and teacher salaries will be lost, I submit that tuition tax credit will only supply the necessary relief from over crowding in the classrooms we experience or the need to build additional facilities.

Rural areas may not have opportunity to utilize private or parochial schools, may be another contention. However, my own father moved our family from the farm 11 miles from the Canadian border on the Hi-line to Havre just so we could attend parochial school. This demonstrates that for parents given a choice, they will sacrifice and accommodate the circumstances to enroll their children in the school of their choosing. However, back then the ratio of tax dollars extracted from families was a much lower rate. Tuition tax credits can offset this inequality today.

We cannot afford to overlook school tuition tax credit in the education equation for our children any longer. Please give a recommend "do pass" on HB 582. Thank you. children?

EXHIBIT 11
DATE 3/9/95
HB 582

Montana Catholic Conference

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM SHARON HOFF, REPRESENTING THE MONTANA CATHOLIC CONFERENCE. IN THIS CAPACITY I ACT AS LIAISON FOR MONTANA'S TWO ROMAN CATHOLIC BISHOPS ON ISSUES OF PUBLIC POLICY. THE MONTANA CATHOLIC CONFERENCE SUPPORTS HB582 BECAUSE WE SUPPORT PARENTAL CHOICE IN EDUCATION.

TUITION TAX CREDITS ARE A GOOD WAY TO ADDRESS PARENTAL CHOICE IN EDUCATION. HB582 NOT ONLY ALLOWS TUITION TAX CREDIT FOR PARENTS WHO SEND THEIR CHILDREN TO PRIVATE SCHOOLS, IT ALSO ALLOWS TUITION TAX CREDIT FOR PARENTS WHO SEND THEIR CHILDREN TO PUBLIC SCHOOLS LOCATED IN DISTRICTS OTHER THAN THE DISTRICT IN WHICH THEY RESIDE.

THOSE WHO OPPOSE SCHOOL CHOICE INITIATIVES MAKE TWO ARGUMENTS, THAT VOUCHERS ARE UNCONSITUTIONAL AND THAT ALL AID (REGARDLESS OF APPROACH) IS UNCONSITUTIONAL. IN THE CASE OF HB582, WE ARE NOT DEALING WITH VOUCHERS BUT WITH TUITION TAX CREDITS WHICH ARE AVAILABLE NOT ONLY PARENTS WITH CHILDREN ENROLLED IN PRIVATE, SCHOOLS, BUT TO ALL PARENTS WHO PAY TUITION FOR THEIR CHILDREN'S EDUCATION. DECISIONS BY THE U. S. SUPREME COURT IN RECENT YEARS CLEARLY SUPPORT THE CONSITUTIONALITY OF SCHOOL CHOICE INITIATIVES THAT INCLUDE FINANCIAL BENEFITS FOR PARENTS WHO ENROLL THEIR CHILDREN IN RELIGIOUSLY AFFILIATED SCHOOLS AS WELL AS IN PUBLIC SCHOOLS.

a program

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

LOOKING SPECIFICALLY AT SCHOOLS SPONSORED BY RELIGIOUS ORGANIZATIONS, IN 1983, THE SUPREME COURT UPHELD A MINNESOTA STATUTE THAT ALLOWED AN INCOME TAX DEDUCTION FOR TUITION PAID TO PAROCHIAL SCHOOLS, *(MUELLER V. ALLEN, SUPRA,)*. THE COURT NOTED THAT "BY CHANNELING WHATEVER ASSISTANCE IT MAY PROVIDE TO PAROCHIAL SCHOOLS THROUGH INDIVIDUAL PARENTS, MINNESOTA REDUCED THE ESTABLISHMENT CLAUSE OBJECTIONS TO WHICH ITS ACTION IS SUBJECT." (*MUELLER*, 463 U.S. AT 399.) THE COURT ALSO NOTED THAT WHEN PAROCHIAL SCHOOLS ARE SUPPORTED ONLY AS A RESULT OF PRIVATE DECISIONS OF INDIVIDUAL PARENTS, NO IMPRIMATUR OF STATE APPROVAL CAN BE DEEMED TO HAVE BEEN CONFERRED, EITHER ON RELIGION SPECIFICALLY, OR ON RELIGION GENERALLY. *ID.*

THE SUPREME COURT HAS CONSISTENTLY REJECTED THE APPROACH THAT THE ESTABLISHMENT CLAUSE PREVENTS THE UNITED STATES GOVERNMENT FROM PROVIDING ANY DIRECT OR INDIRECT FINANCIAL ASSISTANCE TO RELIGIOUS ORGANIZATIONS. (*SEE, E.G., BOWEN, V. KENDRICK*, 487 U.S. 589 (1988*)*. BENEFITS UPHELD BY THE SUPREME COURT INCLUDE PROPERTY TAX EXEMPTIONS FOR CHURCHES (*WALZ V. TAX COMMISSION*, 397 U.S. 664 1970), DIRECT CASH PAYMENTS TO RELIGIOUS SCHOOLS FOR STATE-MANDATED SERVICES (*COMM. FOR PUB. EDUC. V. REAGAN*, 444 US 645 (1980), TAX DEDUCTIONS FOR TUITION PAID TO RELIGIOUS SCHOOLS (*MUELLER V. ALLEN*, 463 U.S. 388 1983), AND FINANCIAL ASSISTANCE TO STUDENTS ATTENDING RELIGIOUS COLLEGES (*AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE V. BLANTON*, 443 F. SUPP. 97 (M.D. TENN. 1977), *AFF'D*, 434 U.S. 803 (1977). IN THE MUELLER DECISION,

THE SUPREME COURT UPHELD PROGRAMS THAT PROVIDED BENEFITS TO STUDENTS ATTENDING BOTH PUBLIC AND PRIVATE SCHOOLS.

WE URGE THE COMMITTEE'S SUPPORT FOR PARENTAL CHOICE IN EDUCATION AND A DO PASS ON HB582. THANK **YOU.**

EXHIBIT 12
DATE 3/9/95
HB 582

House Education Committee 8:00 A.M.
H.B. 582 March 9, 1995 Room 437

My name is Ed Wipf, I'm from Martinsdale Colony Martinsdale, Mt.

Mr. Chairman and members of this committee, I'd like to thank you for the opportunity to testify before this committee of H.B. 582.

H.B 582 would provide an incentive for parents that place their children in non public schools benifit not only both students in public and private schools but also the taxpayer.

The tax credit this bill would provide for tuition for elementary and secondary education is substantially less than this $ 3000.00 plus figure that it costs the state to educate a student in a public school. This windfall would be a actual savings to the taxpayer and would reduce the work load and responsibility of our public education system.

The state is presently experiencing an era in which the taxpayer has been less than generous when voting on school mill levies and bond issues concerning education. This has created a shortage of classroom space and understafing in the classroom causing hardship for students, teachers and administration at both the local and state level.

The children would benifit by being in a classroom with a more homelike and possibly safer environment, where they could study in small classes, would not be exposed to the problems, peer pressures and influence that unfortunately a lot the children in our public schools are presently exposed to.

I urge you that you look at this bill as a piece legislation where both student and taxpayer will benifit. It is a good bill and

Feaver Testimony

EXHIBIT 13
DATE 3/9/95
HB 582

HB 582 (Boharski)

Hearing: House Taxation, March 9, 1995

Unconstitutional!

See Montana Constitution

1. Article 5 - Legislature

Section 11 - Bills

Subsection (5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

2. Article 10 - Education and Public Lands

Section 6 - Aid Prohibited to Sectarian Schools

Subsection (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

NON-PUBLIC SCHOOL ENROLLMENT COMPARISONS

HOMESCHOOLS

YEAR	NUMBER OF SCHOOLS	K	1-8	9-12	TOTAL
1991-1992	997	66	1,375	218	1,659
1992-1993	1,194	74	1,595	288	1,957
1993-1994	1,402	61	1,886	387	2,334
1994-1995	1,730	87	2,387	436	2,910

PRIVATE SCHOOLS

YEAR	NUMBER OF SCHOOLS	K	1-8	9-12	TOTAL
1991-1992	137	642	5,649	1,720	8,011
1992-1993	126	918	5,277	1,872	8,067
1993-1994	131	784	5,436	1,961	8,181
1994-1995	125	765	5,860	1,962	8,587

03/01/95

MEA THE GENERAL FUND COST OF TUITION TAX CREDITS

FY	PRIVATE & HOME SCHOOL STUDENTS	% CHANGE FROM PRIOR YEAR	TUITION CREDIT GF COST 375 TY95 FY96	750 TY96 FY97	1,000 TY97 FY98	1,000 TY98 FY99
FY92	9,670	NA				
FY93	10,024	3.66%				
FY94	10,515	4.90%				
FY95	11,497	9.34%	4,311,375	8,622,750	11,497,000	11,497,000
FY96*	12,072	5.00%	4,526,944			
FY97*	12,675	5.00%		9,506,582		
FY98*	13,309	5.00%			13,309,215	
FY99*	13,975	5.00%				13,974,675

* STUDENT GROWTH PROJECTED AT A +5% ANNUALLY AFTER FY95

EXHIBIT 14
DATE 3/9/95
HB 582

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

March 9, 1995

Mr. Chairmen, Members of the Committee.

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. ACLU is celebrating 75 years of defending traditional American values as expressed in the Constitution and the Bill of Rights. We spoke against HB 81 during the November 1993 special session, a bill very similar to HB 582. And we rise in opposition today.

First, I remind you that the Montana Constitution is stronger and more specific than the U.S. Constitution in prohibiting aid to sectarian schools. Not only does our State Constitution reiterate the Bill of Rights protections with language that lawmakers "shall make no law respecting an establishment of religion...", but it also has a specific prohibition against "aid to sectarian schools", either direct or indirect. Historically, this is a strongly held value in Montana. This pluralistic vision of the First Amendment is best served by government nuetrality -- disengagement from religion and religious education, rather than participation in it.

Second, despite assertions to the contrary, we beleive there are strong and compelling arguments that a tax deduction or credit would constitute indirect aid. While state law is lacking specific cases on this point, federal decisions have clearly and consistently denied a tax deduction for charitable contributions to discriminatory organizations or schools. Those decisions provide that tax deductions from the federal government are equated to aid to the the discriminatory endeavor as is impermissive.

Third, the argument that the benefit would flow to parochial schools through a private choice of parents and not government is quoted out of context. In Mueller v. Allen, the statute allowed all parents to deduct costs of education private and public, which was important to that decision.

This is a significant distinction, underscored in a more recent case (Zobrest v. Catalina Foothills School District, 509 US, 125 Led 2d 1, 1133 S Ct, June 18, 1993). This case allowed state support for a deaf signer to both public and private school children. The case cited "... an interpreter's presence there (in the Catholic School) cannot be attributed to state decisionmaking." It was also clear that a service was provided in Zobrest so "no funds traceable to the government ever find their way into sectarian schools' coffers." That assurance is not the case with the proposed tax credit. Zobrest was decided by a sharply divided Court in a 5-4 decision, which should be a warn that the line was finely drawn.

Fourth, were this bill to become law, the relationship between the state and religious institutions that would result, or that necessarily would have to exist, for the state to avoid advancing religion, will be of such nature and duration as to constitute "excessive entanglement". Do the private schools want the government more involved in monitoring their policies and procedures, curriculum and personnel decisions? Does the state want to get into the business of examining the details of every private school's business in order to insure that tax credits are used only as intended?

Finally, I would argue, and I beleive the courts would uphold, that the cardinal principle of religious liberty is violated when tax credits are used to support parochial schools where secular education is inseparable from the institution's pervasively religious purpose. Careful analysis will demonstrate that it is not in the best interest of public schools, nor is it in the best interest of private schools, nor is it in the best interest of the state of Montana to give this bill further consideration.

I strongly urge you to vote against HB 582. Thank you for your time and consideration.

EXHIBIT 15
DATE 3/9/95
HB 582

Montana State AFL-CIO

Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624 406-442-1708

Testimony of Helen Christensen, Montana State AFL-CIO on HB582
before the House Taxation Committee, March 9, 1995

Mr. Chairman, members of the committee, for the record my name is Helen Christensen representing the Montana State AFL-CIO and I rise in opposition to House Bill 582.

This bill raises for all of us Montanans two fundamental questions that deserve answering before you cast your vote on HB582:

(1) Do Montanans want a strong public school system available to all Montana children and paid for by all Montana taxpayers?

or

(2) Do Montanans want to reduce our commitment to universal funding for a single universal public education system in order to provide public funding for a second selective private education system?

Traditionally the burden of universal education has been one Americans have been willing to shoulder because we recognize that our communities, indeed our state and our nation, benefit from strong public schools and a universally educated population. The great strengths of this nation -- our economic, cultural and intellectual strength -- are rooted in the promise of a free education for all.

If you choose to weaken our commitment to universal funding of the public schools by relieving some taxpayers of the state's burden and not others, you will simultaneously weaken the very foundation of universal education. What will follow, as sure as day follows night, is a corresponding weakening of our communities, our state and our nation.

That is a sad and unforgivable legacy for tomorrow's children. Please join us in opposing HB582.

Thank you.

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 582

DATE 3/9/95 SPONSOR(S) Rep. Boharski

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Eric [illegible]	MEA			
Loran Frazer	SAM		X	
Mike Kadas	MSBA		X	
Lowell Knowlen	Self	HB 582		X
Edward D. Wipf	Self	HB 582		V
Sam S. Hofer	Self	582		X
Helen Christensen	Mt. State AFL-CIO	HB 582	X	
John Maier	M.F.T.	HB 582	X	
Everett L Lynn	Self	582	X	
Gary DenBesten	Mon. Chr. Sch.	582		X
Laurie Kautzick	Christian Coalition of MT	582		✓
SHARON HOFF	MT CATH. CONF	582		✓
Sr Katherine Franchett	Montana Catholic Schools	582		✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

_____ COMMITTEE BILL NO. _____

DATE _____ SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Andy Klein	Self	582		✓
Verdell Jackson	Self	582		✓
H Gordon Hacey	Self	582		✓
Glen Canfield	Self	582		✓
Linda Jackson	self	582		✓
Charles J. Lorentzen	SELF	582		✓
Robert E. (Bob) Balyeat	Family, Self & Montanans for Better Govt.	HB 582		X
Scott St. Arnauld	Self & AFSCME	582	X	
Jim Hollandsworth	Self	582		✓
Ford Johnson	self	582		✓
JOE BALYEAT	MTs. FOR BETTER GOVT. & SELF	582		✓
DAVID SPADY	SELF	582		✓
Betty Nolton	Mts for Better Government	582		✓

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HOUSE OF REPRESENTATIVES

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DATE _____ SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Tom Schneider 518 N. 18th Bozeman	self	582		X
Scott Crichton	ACLU/MT			X
Duane A. Dewey	Columbus Schools	582	X	
Arlette Randash	Eagle Forum			✓
Fred Happel	MT. for Better Govt			
Roger Hoffman	self	582		✓

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